

REMARKS/ARGUMENTS

The final office action of March 12, 2009 has been carefully reviewed and these remarks are responsive thereto. Reconsideration and allowance of the instant application are respectfully requested. Claims 19, 20, 23 and 42 are pending. Claims 1-18, 21, 22, 24-41 are canceled.

It is respectfully requested that the finality of the present office action be withdrawn. The previous amendment did not necessitate the new rejection. In other words, the determination that the elected species was allowable and applying prior art to a non-elected embodiment could have been done in the initial office action.

Allowable Subject Matter

Preliminarily, applicants note with appreciation the indication that the application contains allowable subject matter. Specifically, the elected species is allowable and claim 42 has been objected to for being dependent upon a rejected base claim, but would be allowable if amended to incorporate all the features of their ultimate base claim and any intervening claims. Accordingly, claim 42 has been rewritten in independent form.

Rejections under 35 U.S.C. § 102

Claims 19 and 23 stand rejected under 35 U.S.C. § 102(e) as being anticipated by WO 2004/080979 to Lee et al. ("Lee"). Applicants respectfully traverse this rejection.

Lee, compound 6, recites:

2-amino-6-[5-(2-fluoro-4-methylbenzoyl)-2-hydroxyphenyl]-N-[2-(1-pyrrolidinyl)ethyl]-4-pyrimidinecarboxamide.

In instant claim 19, formula (i), the proviso (c) when R₁ is -NH₂ (2-amino) and R₃ is hydrogen, then R₂ is not phenyl or phenyl substituted by one or more substituents selected from halogen, hydroxy, C₁-C₆ alkyl, C₁-C₆ alkoxy, nitro, -NH₂, or -NHCOCH₃. This proviso excludes the 5-(2-fluoro-4-methoxybenzoyl)-2-hydroxyphenyl grouping of the Lee compound.

Specifically, the phenyl group attached to the ring is substituted by a hydroxyl so it falls within the proviso of claim 19 and thus is excluded by the present claims. That the phenyl may contain additional substituents is irrelevant. That is, in Lee's compound, the substituent at

position 6 in the ring (equivalent to R₂) is a phenyl substituted with one hydroxyl and meets the conditions of the proviso and hence is excluded from the instant claim. Lee cannot anticipate the instant claims. Withdrawal of the present rejection is requested.

CONCLUSION

All rejections having been addressed, applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same.

Respectfully submitted,
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